



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, MNR, MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matter

During the hearing the landlord reduced the claim for cleaning costs to \$225.00.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$834.40 for damage to the rental unit?

Is the landlord entitled to compensation for unpaid June, 2011, rent in the sum of \$950.00?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on March 9, 2009; rent was \$925.00 per month due on the first day of each month. A deposit in the sum of \$462.50 was paid on March 5, 2009. The tenancy was a fixed term that converted to a month to month tenancy.

The landlord has claimed the following:

cleaning	225.00
June, 2011 rent revenue	950.00
Carpet cleaning	134.40
TOTAL	1609.40

The tenant's confirmed that on May 20, 2011, they gave written notice ending the tenancy effective May 31, 2011. The tenants confirmed they did not pay June, 2011, rent. The landlord was able to rent the unit effective August 1, 2011.

A move-out and move-in condition inspection report was submitted as evidence. The female tenant signed the move-out report, disagreeing with the assessment. The tenant indicated that the unit had extensive mould in the rooms; the bathroom, which had no ventilation, the kitchen closet, all the window sills and bedrooms were mouldy. The tenants submitted photographs which showed the presence of extensive mould growth in the unit.

The landlord testified that the rent for the unit reflects the age and condition of the home. The landlord stated that as a result of air exchange and moisture problems the unit must be wiped down on regular basis, in order to control mould growth. The landlord submitted that the claim for cleaning did not include the removal of mould, but only for cleaning of other areas of the home.

The landlord submitted a copy of an invoice as evidence of costs for painting and cleaning. The landlord stated this document was a summary of a detailed invoice that had been issued for the work completed on the home. The invoice copy included a summary of the costs taken from a detailed invoice, which was not supplied as evidence. A separate carpet cleaning invoice was supplied as evidence.

The tenants acknowledged they had a fire in the kitchen which did cause smoke damage to the cabinets. The tenant's witness stated that the cabinets were old and had required painting at the time the tenants moved into the unit, but that the landlord had not painted them. The landlord stated that the cabinets had been painted not long before the tenancy commenced and that the smoke resulted in costs to sand the cabinets.

The condition inspection report indicated that the kitchen cabinets were damaged at the start of the tenancy; no information on the extent of this damage was recorded.

The tenants stated that the appliances were left reasonably clean.

Clause 19 of the tenancy agreement submitted as evidence required the tenants to have the carpet professionally cleaned at the end of the tenancy. The tenant stated he has a business and cleaned the carpets himself. The landlord stated he was not given any proof that the carpets had been professionally cleaned at the end of the tenancy.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

I find that the tenants have not paid June, 2011, rent in the sum of \$950.00 and that the landlord is entitled to compensation in that amount. The written Notice given on May 20, 2011, ending the tenancy was effective June 30, 2011. The tenants vacated the unit and the landlord lost rent revenue for the month of June.

In relation to the cleaning claim, I found the photographs submitted by the tenants demonstrated an extensive problem with mould in the unit that is not the result of negligence on the part of the tenants. The landlord testified that air exchange is a problem that can be remedied if the tenants wash the surfaces on a regular basis. I find this an unreasonable expectation.

If the landlord knows that the home has moisture and air exchange issues that result in the consistent growth of mould it is not unreasonable to accept that this should be addressed, as provided by section 32 of the Act. Therefore, in the absence of evidence that the cleaning was for items outside of mould, I find, on the balance of probabilities, that the cleaning was not a result of negligence on the part of the tenants and I dismiss the claim for cleaning. The invoice supplied was not the original issued and the summary did not provide a breakdown of the cleaning provided.

I find that the tenants did not have the carpets professionally cleaned and that the landlord is entitled to that cost. This was a term of the tenancy agreement signed by the tenants.

In relation to the painting costs submitted, the tenants acknowledged a fire that resulted in some damage to the kitchen cabinets. Therefore, even if I accept that the cabinets required painting at the start of the tenancy, it is reasonable to accept the landlord's claim that the tenants caused further damage to the cabinets. The landlord did not provide a copy of the original invoice for painting, but I accept that a loss was suffered and find that the landlord is entitled to nominal costs in the sum of \$50.00 for the kitchen cabinet painting.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Cabinet painting and sanding	300.00	50.00
June, 2011 rent revenue	950.00	950.00
Carpet cleaning	134.40	134.40
<b>TOTAL</b>	<b>1609.40</b>	<b>1134.40</b>

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$462.50, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,184.40, which is comprised of loss of rent revenue, damage and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$462.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$671.90. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 20, 2011.

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Residential Tenancy Branch